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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/961,091	01/14/2002	Raymond P. Johnston	54404US008	6682
32692	7590	03/17/2006		
3M INNOVATIVE PROPERTIES COMPANY PO BOX 33427 ST. PAUL, MN 55133-3427			EXAMINER WIEKER, AMANDA FLYNN	
			ART UNIT 3743	PAPER NUMBER

DATE MAILED: 03/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/961,091

Applicant(s)

JOHNSTON ET AL.

Examiner

Amanda F. Wieker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 36-60 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 36-46, 48-54, 56, 57, 59 and 60 is/are rejected.
- 7) ☒ Claim(s) 47, 55 and 58 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 January 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 8/29/05.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 19 July 2005 has been entered.

Response to Amendment

2. The amendment filed on 04 May 2005 has been received and made of record. Claims 36 and 51 have been amended. Claims 36-60 are pending.

Claim Objections

3. Claim 47 is objected to because of the following informalities: Claim 47 lacks antecedent basis for "the fluid reservoir". Claim 47 could be amended to depend from --claim 38-- to rectify this problem. Appropriate correction is required.

4. Applicant is advised that should claim 51 be found allowable, claim 52 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

6. Claims 36-38, 45-46, 48, 51-54 and 56-57 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent Number 5,895,380 to Turi et al.

Turi et al. disclose a medical treatment article (40) comprising: at least one fluid control film component (50) having at least one microstructure-bearing surface (surface of film bears perforations 58) with a plurality of channels (52, 53) that extend along the surface and permit transport of fluid between a medical treatment site on a patient or user and a remote area (42).

Regarding claim 37, Turi et al. disclose a surgical/wound dressing (col. 1, line 9).

Regarding claim 38, the remote area comprises a fluid reservoir (42).

Regarding claim 45, Turi et al. disclose adhesive on the film (col. 8, line 66- col. 9, line 5).

Regarding claim 46, the dressing is capable of being a wound dressing and drain, and are capable of being inserted into the medical treatment site, if desired by the user.

Regarding claim 48, the article further comprises a backing layer (41), wherein the backing layer comprises an adhesive (56) to adhere the article in position for fluid transfer communication with the medical treatment site.

Regarding claims 51-54, the method of using the article as claimed is anticipated by the normal use of the device disclosed by Turi et al.

Regarding claims 56-57, the fluid that is transported from the treatment site to the remote area is capable of being a medicament as claimed, or any other fluid that has been applied to the treatment site, and is moving away therefrom.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. Claims 39-44, 49-50 and 59-60 are rejected under 35 U.S.C. 103(a) as being unpatentable over Turi et al.

As regards claims 39-44, Turi et al. discloses a medical treatment article having a microstructure-bearing film surface with a plurality of channels extending along the surface of the film. Turi et al. does not specify the presently claimed limitations of claims 39-40.

However, absent a critical teaching and/or a showing of unexpected results derived from providing the film with the claimed limitations, the examiner contends that the limitations such as the cross-sectional shape of the channels, the degree of the included angle, primary and secondary channels having a particular size, the depth of the channels, the material of the film and the that the film is translucent, are an obvious design choice which do not patentably distinguish applicant's invention.

At the time the invention was made, it would have been an obvious matter of design choice to one of ordinary skill in the art to have made the film of the article with the above-noted features, because Applicant has not disclosed that such features provide an advantage, are used for a particular purpose, or solve a stated problem. A thorough reading of the specification provides no criticality to these features. One of ordinary skill in the art, furthermore, would have expected Turi et al.'s article and Applicant's invention to perform

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equally well with either the film provided by Turi et al., or the claimed film because both materials would perform the same function of permitting and directing transport of fluid between the medical treatment site and the remote area.

Therefore, it would have been *prima facie* obvious to modify Turi et al. to obtain the invention as specified in claims 39-44 because such a modification would have been considered a mere design consideration which fails to patentably distinguish over the prior art of Turi et al. The claimed method of using the article is made obvious by the normal use of the device as made obvious by Turi et al.

Allowable Subject Matter

9. Claims 47, 55 and 58 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

10. Applicant's arguments, see pages 7-8, filed 04 May 2005, with respect to Dowdy et al. have been fully considered and are persuasive. The rejection based on the Dowdy et al. reference has been withdrawn.

11. Applicant's arguments filed 04 May 2005, with respect to Turi et al., have been fully considered but they are not persuasive.

12. Applicant's sole argument against the Turi et al. reference is that Turi et al. disclose perforations that are formed through the film 50, and that these do not constitute "channels that extend along a major surface" of the fluid control component.

As discussed in the rejection above, Turi et al. disclose a medical treatment article (40) comprising: at least one fluid control film component (50) having at least one microstructure-

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bearing surface (perforations 58) with a plurality of channels (52, 53) that extend along the surface and permit transport of fluid between a medical treatment site on a patient or user and a remote area (42).

The perforations (58) are not considered to be the channels, as required by the claim. Rather channels (52, 53) meet the claim requirement of “a plurality of channels that extends along the surface and permits transport of fluid between a medical treatment site on a patient or user and a remote area”.

In addition, it is noted that Applicant’s arguments that Turi et al. does not disclose “channels that extend along a major surface” is not commensurate with the scope of the claims. The claims do not require “channels that extend along a major surface”. The claims simply require channels that extend along the surface.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Amanda F. Wieker whose telephone number is 571-272-4794. The examiner can normally be reached on Monday-Thursday, 7:30 - 5:00 and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


afw

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